

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: SB 1800

INTRODUCER: Senator Aronberg

SUBJECT: Domestic Violence/State Employees

DATE: March 22, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<b>Favorable</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency employee as required by the provisions of SB 498. This bill is linked to SB 498, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

The bill also makes confidential and exempt for a period of one year after the leave is taken both the written request for the leave and the agency time sheet related to the leave.

The bill recognizes these exemptions as subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that these exemptions will stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

It provides a statement of public necessity for the exemptions.

This bill creates subsection 741.313(7), Florida Statutes.<sup>1</sup>

## II. Present Situation:

### **Employment Records of Public Employees**

The employment records of public employees, unless specifically exempted, are public records. These records include requests for leave and time sheets.

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<sup>1</sup> Section 741.313, F.S., is created by SB 498.

### **Domestic Violence**

Nationally, more than 1.5 million adults are victims of domestic violence each year, and more than 85 percent of the victims are women.<sup>2</sup> After years of steady increases in domestic violence numbers, the total number of reported domestic violence offenses<sup>3</sup> reported to law enforcement agencies in Florida declined slightly in 1998, and has continued the same slight decline through 2004, according to the Florida Department of Law Enforcement (FDLE).<sup>4</sup>

### **Senate Bill 498**

Senate Bill 498, to which this bill is linked, requires employers to allow employees to request or take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

Application of the bill is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 12 months. The employee is required to provide advance notice of the leave except in cases of imminent danger to the employee or the employee's family. The employer is authorized to require documentation of the act of domestic violence. The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in SB 498, unless this requirement is waived by the employer.

The employer is required to keep all information relating to the employee's leave under this section confidential. The employer is prohibited from taking any disciplinary action against the employee for exercising rights under SB 498, but the employee is not granted any rights under the bill to continued employment or other benefits not available outside the provisions of the bill.

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<sup>2</sup> Legal Momentum, an advocacy and research organization based in New York City, as quoted in *When Home Comes to Work*, ABA Journal (Sept 2005), at 42.

<sup>3</sup> Domestic violence crimes include murder, manslaughter, forcible rape, forcible sodomy, forcible fondling, aggravated assault, aggravated stalking (1996-present), simple assault, simple stalking, threat/intimidation and arson (1992-1995), according to FDLE.

<sup>4</sup> FDLE reports a total of 131,152 domestic violence crimes in 1995 and 119,772 in 2004. The rate of incidence has fallen from 926.9 to 683.8 per 100,000 population during the same time period.

## Public Records

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>5</sup> The Florida Supreme Court has noted that ch. 119, F.S., the Public Records Act, was enacted

. . . to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people.<sup>6</sup>

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>7</sup> Article I, s. 24 of the State Constitution, provides that:

(a) Every person<sup>8</sup> has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. . . .

Unless specifically exempted, all agency<sup>9</sup> records are available for public inspection. The term “public record” is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>10</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.<sup>11</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>12</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>13</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to

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<sup>5</sup> Sections 1390, 1391, F.S. (Rev. 1892).

<sup>6</sup> *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

<sup>7</sup> Article I, s. 24 of the State Constitution.

<sup>8</sup> Section 1.01(3), F.S., defines “person” to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>9</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>10</sup> Section 119.011(11), F.S.

<sup>11</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>12</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>13</sup> Article I, s. 24(c) of the State Constitution.

accomplish the stated purpose of the law.<sup>14</sup> A bill enacting an exemption<sup>15</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>16</sup> A bill creating an exemption must be passed by a two-thirds vote of both houses.<sup>17</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt.<sup>18</sup> If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>19</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>20</sup>

### **The Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>21</sup> provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

### **III. Effect of Proposed Changes:**

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency employee as required by the provisions of SB 498. This bill is linked to SB 498, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

The bill also makes confidential and exempt for a period of one year after the leave is taken both the written request for the leave and the agency time sheet related to the leave.

The bill recognizes these exemptions as subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that these exemptions will stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

It provides a statement of public necessity for the exemptions.

The bill contains an effective date contingent on SB 498 or similar legislation taking effect and becoming law.

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<sup>14</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>15</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>16</sup> Art. I, s. 24(c) of the State Constitution.

<sup>17</sup> *Ibid.*

<sup>18</sup> *WFTV, Inc., v. The School Board of Seminole, etc., et al*, 874 So.2d 48 (5<sup>th</sup> DCA), rev. denied 892 So.2d 1015 (Fla. 2004).

<sup>19</sup> *Ibid* at 53; see also, Attorney General Opinion 85-62.

<sup>20</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>21</sup> Section 119.15, F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency employee as required by the provisions of SB 498. This bill is linked to SB 498, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

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**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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